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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,416	05/11/2009	Graeme Andrew Dubar	7733P011	1694
8791 7590 12/20/2011 BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
EXAMINER GANESAN, SUNDHARA M				
ART UNIT 3764		PAPER NUMBER		
MAIL DATE 12/20/2011		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/583,416

Applicant(s)

DUBAR, GRAEME ANDREW

Examiner

SUNDHARA GANESAN

Art Unit

3764

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1,2,6-10,21,22,31,36-38,43,46,49,54,57-59,64 and 73-75 is/are pending in the application.
- 5a) Of the above claim(s) 36-38,43,46,49,54,57-59,64,73 and 74 is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1,2,6-10,21,22,31 and 75 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 16 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-946)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/8/2011.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Claims 36-38, 43, 46, 49, 54, 57-59, 64, 73 and 74 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/19/2011.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 6-9 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Vaughan (US Pat. 5,062,629). Vaughan describes the same invention as claimed, including: an activity board assembly (10) comprising: a board (26) having an upper surface for supporting a user; a base portion (12); a resilient support (16) member having an upper and a lower distal end, the upper end being connected to an underside of the board and the lower distal end being connected to the base portion, wherein the board is rotatable with respect to the base portion (Fig. 3) about a first axis in a plane substantially orthogonal with the upper surface of the board or the base portion (via ball bearing turntable 14); a second axis substantially orthogonal to the first axis and substantially parallel to the upper surface of the board or the base portion (via 16); a

third axis orthogonal to both the first and second axes (via 16) and a fourth axis substantially parallel to the second axis (via larger deflections of 16 caused by applying a stepping force distally on board 26); the connection between the resilient support member and the base portion being configured to prevent linear movement with respect to each other (Fig. 2).

Regarding claim 2, the board is rotatable about the first axis by a rotatable connection between the resilient support member and either the board or the base portion (via ball bearing turntable 14).

Regarding claim 6, wherein lateral displacement of the upper end of the support member from the first axis provides at least a component of rotational movement about the second or third axes (see Fig. 1, Fig. 2; deflection of coil springs 16 in response to the user stepping/placing weight on different areas of the board provides the claimed motion).

Regarding claim 7, the resilient support member is formed from at least one of: a coil spring (16), a unitary or laminate elastic rod, or any other object capable of bearing the weight of a user mounted on the board without permanent deformation whilst also being capable of resilient lateral displacement or bending at the upper end under the effects of eccentric forces applied by the user about the first axis (see ABSTRACT).

Regarding claim 8, the resilient support member is biased to return the board from a displaced position to an equilibrium position with the first axis vertically aligned (this feature is inherently present in springs 16 as long as they have not undergone plastic deformation and loading is within the elastic range of the spring).

Regarding claim 9, wherein the resilient support member is adapted to allow linear movement of the board along the first axis (if the user jumps downward on the platform, the device will inherently produce the claimed linear movement, caused by compression of springs 16).

Regarding claim 21, the base portion has a laterally enlarged ground-engaging lower surface and a central connecting member (generally at 14) connected to the lower end of the resilient support member (Fig. 2).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughan (US Pat. 5,062,629) in view of Chen (US PGPub. 2003/0139268). Vaughan describes the invention substantially as claimed, but does not show a tilting mechanism interposed between the upper end of the resilient support member and the lower surface of the board, capable of providing rotation about the second axis.

Chen teaches a balance exercising device in which a platform (14) is pivotally mounted to a base (10) via a coil spring (18). Chen teaches that it is known in the art to include a tilting mechanism (16, 144) on a balance exercise device for the purpose of

providing tilting of the platform which causes added instability, making the user train harder to balance on the device.

At the time the invention was made, it would have been obvious to one having ordinary skill in the art to include the pivoting connection taught by Chen on the device of Vaughan. Doing so provides the predictable result of adding instability to the platform by providing an extra "wobble" that the user must counteract. Therefore, it would have been prima facie obvious to one having ordinary skill in the art to include the pivotal connection taught by Chen on the device of Vaughan to provide additional instability to the device.

6. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughan (U Spat. 5,062,629) in view of Commisso (US Pat. 6,878,102). Vaughan describes the invention substantially as claimed, but does not show at least one wheel or roller assembly located on the base portion ground-engaging lower surface.

Commisso teaches a balance exercise device in which a platform (generally indicated at 10 and 14) is manipulated over a base (16). Commisso teaches that it is known in the art to place wheels on the base portion to engage the ground (col. 6, lines 39-42).

At the time the invention was made, it would have been prima facie obvious to include the ground-engaging wheels taught by Commisso on the device of Vaughan. Doing so provides the predictable result of adding instability to the device by having the entire platform roll along the ground while the user is balancing on the device.

Therefore, it would have been prima facie obvious to modify Vaughan to include the wheels as taught by Commisso to add further instability to the device to enhance the training effect/challenge for the user.

7. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughan (US Pat. 5,062,629) in view of Commisso (US Pat. 6,878,102). Vaughan describes the invention substantially as claimed, including: an activity board assembly (10) comprising: a board (26) having an upper surface for supporting a user; a base portion (12); and a support member (16) having an upper and a lower distal end, the upper end being connected to an underside of the board and the lower distal end being connected to the base portion (Fig. 3), wherein the board is rotatable with respect to the base portion about a first axis in a plane substantially orthogonal with the upper surface of the board or the base portion, wherein the first axis of rotation provides 360 degrees of rotation (via ball bearing turntable 14); a second axis substantially orthogonal to the first axis and substantially parallel to the upper surface of the board or the base portion (via 16); a third axis orthogonal to both the first and second axis (via 16); and a fourth axis substantially parallel to the second axis (via larger deflections of 16 caused by applying a stepping force distally on board 26).

Vaughan does not show the base portion being provided with one or more wheel or roller assemblies on a lower surface.

Commisso teaches a balance exercise device in which a platform (generally indicated at 10 and 14) is manipulated over a base (16). Commisso teaches that it is

known in the art to place wheels on the base portion to engage the ground (col. 6, lines 39-42).

At the time the invention was made, it would have been prima facie obvious to include the ground-engaging wheels taught by Commisso on the device of Vaughan. Doing so provides the predictable result of adding instability to the device by having the entire platform roll along the ground while the user is balancing on the device. Therefore, it would have been prima facie obvious to modify Vaughan to include the wheels as taught by Commisso to add further instability to the device to enhance the training effect/challenge for the user.

8. Claim 75 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughan (US Pat. 5,062,629) in view of Chen (US PGPub. 2003/0139268) and further in view of Pomeroy (US Pat. 4,470,594). Vaughan describes the invention substantially as claimed, but does a pair of adjustable hinged jaws to vary the friction on a portion of a rotatable housing coupled between the board and the resilient support member.

Chen teaches a balance exercising device in which a platform (14) is pivotally mounted to a base (10) via a coil spring (18). Chen teaches that it is known in the art to include a rotatable housing (16, 144) on a balance exercise device for the purpose of providing tilting of the platform which causes added instability, making the user train harder to balance on the device.

At the time the invention was made, it would have been obvious to one having ordinary skill in the art to include the pivoting connection taught by Chen on the device of Vaughan. Doing so provides the predictable result of adding instability to the platform by providing an extra "wobble" that the user must counteract. Therefore, it would have been prima facie obvious to one having ordinary skill in the art to include the pivotal connection taught by Chen on the device of Vaughan to provide additional instability to the device.

Vaughan in view of Chen describes the invention substantially as claimed, but still does not show a pair of adjustable hinged jaws to vary the friction on a portion of a rotatable housing.

Pomeroy teaches a resistance adjustment mechanism including a pair of adjustable hinged jaws (31, 31') to vary the friction on a portion of a rotatable housing (19).

At the time the invention was made, it would have been prima facie obvious to include the hinged jaw resistance adjustment mechanism taught by Pomeroy on the device of Vaughan in view of Chen. Doing so provides the predictable result of adjusting the degree of instability to suit the skill level of a user. If a novice wishes to use the device, the adjustment can be made to increase the frictional fit such that the wobble provided is very minimal or nonexistent. Similarly, if an advanced user wishes to use the device, the adjustment can be made so that the wobble is maximal. Therefore, it would have been prima facie obvious to modify Vaughan in view of Chen and Pomeroy to

include a hinged jaw friction adjustment system to provide additional and adjustable instability to the device.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See for PTO-892 for cited art of interest.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUNDHARA GANESAN whose telephone number is (571)272-3340. The examiner can normally be reached on 10:00 am - 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 3764

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